



BEFORE THE PUBLIC UTILITIES COMMISSION OF THE

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STATE OF CALIFORNIA

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PRE-WORKSHOP COMMENTS OF SOUTHERN CALIFORNIA EDISON COMPANY
(U 338-E) REGARDING TRADEABLE RENEWABLE ENERGY CREDITS

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Dated: August 17, 2007

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STATE OF CALIFORNIA**

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(U 338-E) REGARDING TRADEABLE RENEWABLE ENERGY CREDITS

In accordance with the July 19, 2007 Administrative Law Judge’s Ruling Requesting Pre-Workshop Comments on Tradable Renewable Energy Credits and the August 3, 2007 Administrative Law Judge’s Ruling Revising Schedule for Pre-Workshop Comments on Tradable Renewable Energy Credits (the “ALJ Rulings”), Southern California Edison Company (“SCE”) respectfully submits these pre-workshop comments regarding tradable renewable energy credits (“RECs”) in advance of the workshop scheduled for September 5-7, 2007.

I. **INTRODUCTION**

SCE endorses the use of unbundled and tradable RECs as a mode of compliance with California's Renewables Portfolio Standard ("RPS") legislation. SCE supports unrestricted trading of RECs prior to their use (retirement) for regulatory compliance. There should be no limitation on the number of times a REC can be transferred prior to being used (retired) for regulatory compliance. However, a REC, whether bundled or unbundled, tradable or non-tradable, should only be used once for regulatory compliance.

The ALJ Rulings requesting pre-workshop comments on tradable RECs identify several main areas of discussion and a myriad of specific sub-issues and questions. The questions identified are thoughtful and will undoubtedly be useful in stimulating discussion on a variety of topics at the workshop scheduled for September 5-7, 2007. SCE welcomes the opportunity to participate in this process.

The principal focus of the workshop and the Commission's effort at this juncture should be on adopting rules that create certainty and confidence that RECs can be used for RPS compliance in California by RPS-obligated entities. Specifically, in order for unbundled, tradable RECs to be used for RPS compliance, the Commission must:

- Ensure that the unbundling and trading of RECs does not result in different compliance treatment of investor-owned utilities ("IOUs") and other load-serving entities ("LSEs");
- Clearly define the attributes and eligibility of an unbundled, tradable REC in a manner sufficient to assure holders of RECs that they will be honored for RPS compliance in California; and
- Clearly define the RPS compliance and accounting rules that apply to RECs.

As a preliminary matter, SCE strongly urges the Commission to eschew engaging in detailed discussions regarding market design and trading rules for RECs. Many of the questions raised in the ALJ Rulings relate to how RECs can or should be traded. While this is a very interesting topic for discussion, SCE believes that this emphasis is misplaced. If the Commission provides clear and unassailable guidance as to how RECs are to be used for purposes of RPS compliance, a REC market will develop on its own. Once it is clearly understood that unbundled, tradable RECs can and will be honored as a mode of RPS compliance in California, parties will assign value to RECs and begin to transact in RECs. These initial transactions will begin to form the basis for valuing RECs and determining reasonableness for purposes of cost recovery in rates. SCE believes that most transactions in RECs, at least in the near term, will occur through bilateral contracting. Thus, what is transferred, how it is transferred, and how it is

valued will all be left to arms length transactions, presumably between sophisticated counterparties, in the near term. Over time, as confidence in the use of RECs for regulatory compliance in California increases and as sources of RECs develop beyond those readily available today, SCE anticipates that more sophisticated transactions and markets will emerge. *A priori* attempts to design a REC market are unnecessary and counterproductive.

In these comments, SCE proposes that a REC should be defined as encompassing all that is necessary in order for the holder of the REC in a denomination of, for example, 1 MWh, to be treated as if it had received 1 MWh of energy from an eligible renewable energy resource. The REC must be defined with sufficient specificity and clarity to ensure that no residual adverse claim can be asserted by the original owner of the energy associated with the REC or by a third party. Stated differently, once a REC is unbundled and transferred from one party to another, the transferor should no longer hold any of the attributes necessary in order to claim RPS compliance with respect to the underlying energy associated with that REC. A clear definition of what attributes are necessary to be encompassed within a REC is essential in order to provide regulatory and commercial certainty going forward.

SCE also proposes that for RPS eligibility, accounting and compliance purposes, the same rules that apply to energy should also apply to RECs. For example, in order for a REC to be eligible for RPS compliance, it should retain and meet the same in-state delivery requirements applicable to the energy with which it was originally associated. It makes little sense for the state to honor a REC originally bundled with energy that would not otherwise have been eligible for California's RPS program.

Similarly, the same RPS accounting rules already adopted by the Commission with respect to renewable energy should be applied to unbundled and tradable RECs. RECs should be allowed to be banked forwarded by the entity that possesses them. "Earmarking" rules should also apply to RECs. An entity that purchases RECs for future delivery should be able to earmark them towards current compliance. A certain amount of an LSE's portfolio should come from long-term contracts, whether they be REC contracts or fully bundled contracts.

Finally, SCE urges the Commission to authorize the use of unbundled, tradable RECs for RPS compliance on a prospective basis only.

II.

STATUTORY AUTHORITY FOR REC TRADING

The “original version” of California’s RPS legislation, Senate Bill (“SB”) 532 (Sher, 2002), would have authorized using RECs for RPS compliance and would further have provided that if the price of a REC exceeded 1.5 cents/kWh, an RPS obligated entity could pay 1.5 cents/kWh into the California Energy Commission’s (“CEC”) Renewable Resource Trust Fund as an alternative means of compliance. SB 532 was superseded, however, by SB 1078 (Sher, 2002), which ultimately was enacted into law, and served as the statutory framework for the State’s RPS program.

SB 1078, codified at Public Utilities Code § 399.11, et seq., made no reference whatsoever to RECs, much less to a framework for regulatory compliance using RECs in lieu of the procurement of energy from resources that meet the eligibility requirements of the legislation. In the regime established by SB 1078, regulatory compliance with the State’s RPS goals could only be accomplished through the procurement of energy having certain associated “green attributes” (*i.e.*, energy from an eligible renewable energy resource), essentially a “bundled” transaction. SB 1078 did not expressly or impliedly authorize the use of the “green attributes” standing alone – that is “unbundled” from the associated energy – for purposes of RPS compliance.

SB 107 (Simitian, 2006), which amended the RPS legislation enacted in SB 1078, changes that by specifically empowering the Commission to authorize the use of RECs for RPS compliance separate and apart from the associated energy, subject to certain conditions being met.¹ Specifically, the Commission may authorize the use of unbundled RECs for RPS

¹ See Cal. Pub. Util. Code § 399.16.

compliance when both the Commission and the CEC conclude that the Western Renewable Energy Generation Information System (“WREGIS”) – the system for tracking and verifying RECs established by the CEC – is operational, is capable of independently verifying the electricity generated by an eligible renewable energy resource and delivered to a retail seller, and can ensure that RECs shall not be double counted by any seller of electricity within the service territory of the Western Electricity Coordinating Council (“WECC”).²

SB 107 also expressly limits the use of unbundled RECs for RPS compliance in California unless the electricity with which such RECs were originally associated is “delivered” to a retail seller, the Independent System Operator, or a local publicly owned electric utility within the meaning of the RPS legislation.³ This means that the electricity which gave rise to the REC must be the output of an “in-state renewable electricity generation facility” that is used to serve end-use retail customer located within California.⁴ As a result, although SB 107 certainly contemplates the use of RECs for RPS compliance, it does not permit the use of RECs unless the electricity associated with the RECs ultimately will be used to serve retail customers within California.

Finally, a very important feature of SB 107 is that it prohibits the creation of RECs with respect to any power delivered pursuant to a contract entered into by authority of the Public Utility Regulatory Policies Act of 1978 (“PURPA”), but permits the associated power to be counted towards RPS compliance if the generator meets the eligibility requirements of the California RPS legislation.⁵ As noted in the ALJ Rulings, this provision in state law resolves one of the significant and potentially more contentious issues scoped for consideration in this

² Cal. Pub. Util. Code § 399.16(a)(1).

³ Cal. Pub. Util. Code § 399.16(a)(3).

⁴ Cal. Pub. Util. Code § 399.12(a); Cal. Pub. Res. Code § 25741(a). The definition of “in-state renewable electricity generation facility” is in Public Resources Code § 25741(b). Among other things, an “in-state renewable electricity generation facility” must be either: (1) a facility located in California or near the border of California with the first point of connection to the transmission network within California and electricity delivered to a California location; or (2) a facility with a first point of interconnection to the transmission network outside of California that is connected to the transmission network within the WECC service territory, delivers its electricity to a California location and meets certain other conditions.

⁵ Cal. Pub. Util. Code § 399.16(a)(5)-(6).

docket – who owns the RECs associated with the generation of renewable energy by qualifying facilities (“QFs”).⁶

III.

WREGIS

Following a resolution adopted by the Western Governor’s Association (“WGA”) in June 2002 supporting the creation of an independent regional tracking system to track and verify renewable generation in the Western states, substantial progress has been made to bring WREGIS to fruition. In October of 2003, the CEC directed its staff to work with the WGA to develop a regional certificates-based renewable energy tracking system, which it intends ultimately to use to fulfill its obligation to certify, track and verify renewable energy production for purposes of compliance with California’s RPS program.⁷ The design of WREGIS has been completed, and WREGIS is now on-line for testing purposes.

It is too early to say that WREGIS is “operational” within the meaning of the RPS legislation or capable of meeting the statutory conditions for the authorization of unbundled RECs for RPS compliance pursuant to Public Utilities Code § 399.16(a)(1). However, SCE has participated as a stakeholder (and as a principal user) in both the architecture design and the operating rules for WREGIS and believes that, after testing, WREGIS will be capable of tracking and ensuring appropriate treatment of RECs to ensure that double counting does not occur.

WREGIS is designed to operate much like a depository bank, and is expressly not designed or intended, according to its mission statement, to operate as an exchange for RECs. WREGIS is not a “trading platform.” It will not create a vehicle for bringing together buyers and sellers of RECs or establish a clearing price for RECs. Rather, WREGIS is a means of recording

⁶ In *American Ref-Fuel Company, et al.*, 105 FERC ¶61,004, (October 1, 2003), the Federal Energy Regulatory Commission (“FERC”) concluded that the purchase of energy and capacity from a QF at avoided cost does not include the transfer of “green attributes” or RECs under federal law, but that whether such a transfer has occurred is a matter to be decided according to state law. SB 107 conclusively establishes that no RECs that can be claimed for RPS compliance in California are created in a transaction entered into under the authority of PURPA.

⁷ See Cal. Pub. Util. Code § 399.13.

and tracking the procurement of renewable energy in California and other states. Because WREGIS is designed to allow the transfer of RECs from one account to another account, it has the functionality to permit parties that enter into transactions for the transfer of RECs for value to execute that transaction by transferring RECs via WREGIS. However, WREGIS will not “clear” the transaction, and WREGIS will not be a party to or an intermediary in the transaction. It will perform the very important function of allowing parties to consummate or evidence their transaction.

IV.

THE CURRENT RPS PROCUREMENT PARADIGM AND THE POTENTIAL MARKET FOR RECS

While it is certainly possible to imagine and design any number of different procurement mechanisms to stimulate the production and purchase of renewable energy in California, the fundamental procurement mechanism today is long-term contracts for bundled energy and “green attributes.” Today, most of the renewable energy procured to meet the State’s RPS goals is acquired pursuant to legacy QF contracts entered into pursuant to PURPA or more recent long-term contracts entered into as a result of solicitations conducted by LSEs to meet the State’s RPS goals. As discussed above, contracts entered into pursuant to PURPA do not result in the creation of California-compliant RECs. Furthermore, in all transactions that SCE has entered into since 2003 to acquire new generation to meet the State’s RPS goals, SCE has required the seller to assign to SCE all of the RECs or “green attributes,” resulting in a bundled transfer of RECs. Indeed, the Commission has required RPS-obligated LSEs to obtain such attributes as part of the transaction for energy and capacity as a standard contract term, and would be unlikely to approve a contract for purposes of RPS compliance if this language were not included in the contract. SCE has not purchased any RECs or “green attributes” independently of the associated energy, and has not attempted to acquire or use RECs for purposes of RPS compliance since they currently are not eligible for that purpose under California law.

It must also be recognized that the State is “short” renewable energy, that is, all of the RPS-obligated LSEs in California are currently net buyers of renewable energy (and any associated RECs). Thus, while many entities, such as SCE, have substantial non-QF renewable energy purchases annually, they are not in a position to “unbundle” the RECs for resale after they have been acquired because the RECs are needed for RPS compliance. Only if an RPS-obligated LSE were to “overprocure” or suddenly experience a drastic migration of load (thereby increasing the percentage of its total load served by existing renewable resources in its portfolio) would the entity be in a position to remarket unbundled RECs.

There are some limited sources of RECs that could become available to RPS-obligated LSEs for compliance in the near term. These include customer/owners of distributed photovoltaic generation. As indicated in the ALJ Rulings, a recent Commission decision on this topic determined that any RECs associated with the production of distributed renewable generation vest with and should remain with the customer/owner of the generation.⁸ Because these RECs are not transferred to the LSE with which the installation connects, the customer/owner theoretically has the ability to sell the RECs to an LSE in a separate transaction or to a third party. This would be the only way to monetize the inherent value of these RECs. Clearly, opportunities now exist for LSEs to buy these RECs, and to the extent the circumstances exist to permit the use of unbundled, tradable RECs for RPS compliance, for the purchaser to use them for that purpose. However, while the volumes of distributed photovoltaic generation in the State are likely to expand over time given the State’s incentive programs, it is unlikely that these volumes will make a substantial contribution to meeting the RPS goals on a statewide basis in the near term.

Another potential source of uncommitted RECs is the merchant renewable market. As demonstrated in the Commission’s recent hearings in this docket on the market for short-term renewables contracts, there is little evidence that parties in today’s renewable markets are

⁸ See D.07-01-018.

developing a substantial amount of renewable generating resources without a long-term off-take contract (as to which, the buyer presumably will require a bundled transfer including any “green attributes” or RECs). Nevertheless, there may be some uncommitted renewable resources in today’s market that are prepared to provide RECs to RPS-obligated LSEs and it is certainly conceivable that the authorization to unbundle and trade RECs will stimulate the development of this type of project and lead to a more significant number of transactions in which the RECs are sold separately from the associated power. This type of transaction will undoubtedly require a sophisticated seller with a significant portfolio of assets to absorb, market, schedule and deliver the power associated with the REC once it has been unbundled.

In this environment, it is highly unlikely that the mere authorization to utilize unbundled, tradable RECs for RPS compliance will result in a substantial volume of RECs being used for that purpose in the near term. While SCE endorses the use of unbundled, tradable RECs as a mode of regulatory compliance, SCE doubts that the authority to do will have an immediate material effect on achievement of the State’s RPS goals under the presently defined program.

For that reason, SCE urges the Commission to consider the issue of relaxing or removing the in-state delivery requirements of the RPS program for both RECs and bundled renewable power. As discussed above, the pool of RPS-eligible electricity that can provide a source of RPS compliance either through the purchase of an unbundled REC or bundled renewable electricity is very limited. The constraints in the California renewable energy market have resulted in fewer renewable resource options and higher prices for California customers. Furthermore, given the absence of any significant source of RECs in the near term, authorizing the use of unbundled, tradable RECs for RPS compliance may create a system with a high demand for RECs and little supply.

To the extent out-of-state resources may be able to provide a lower cost and more abundant source of RECs and bundled renewable electricity, California customers could benefit. SCE recommends that the Commission consider whether expansion of the resource options for RPS-obligated LSEs to include some out-of-state resources (as a source of both RPS-eligible

RECs and bundled power) may be a way of maximizing the State’s potential of reaching 20 percent renewables while continuing to serve the overall goals of the RPS program. The use of out-of-state RECs for California RPS compliance would be one potential alternative. This approach would likely require legislation; however, SCE believes this is a worthy topic for comment and discussion at the workshop.

V.

THE USE OF RECS FOR RPS COMPLIANCE SHOULD BE THE SAME FOR ALL LSES

In previous comments filed with the Commission, some parties have asserted that the Commission should impose limits on the use of RECs by IOUs but not on electric service providers (“ESPs”) or community choice aggregators (“CCAs”).⁹ There is no legal or policy basis for treating IOUs differently than other LSEs with respect to RECs. In fact, just the opposite is true.

In implementing the RPS program for ESPs, CCAs, and small and multi-jurisdictional utilities, the Commission must, as a matter of law, ensure that all LSEs are treated equally. The RPS legislation requires that ESPs and CCAs shall be “*subject to the same terms and conditions*” applicable to IOUs.¹⁰ Similarly, Public Utilities Code § 380(e) provides that “[e]ach load-serving entity shall be subject to the *same requirements* for . . . the renewables portfolio standard program that are applicable to electrical corporations pursuant to this section, or otherwise required by law, or by order or decision of the commission.”¹¹

Adherence to this principle of equal treatment is also essential if the State is going to achieve the overall RPS goal of 20 percent renewables in California without unfairly burdening

⁹ See, e.g., Comments of the California Manufacturers and Technology Association and the California Large Energy Consumers Association in Response to the ALJ Ruling of April 20, 2006, R.06-02-012, at 6-7 (May 31, 2006).

¹⁰ Cal. Pub. Util. Code §§ 399.12(h)(2), 399.12(h)(3) (emphasis added).

¹¹ Cal. Pub. Util. Code § 380(e) (emphasis added).

one class of California customers, the customers of the IOUs, with the cost of achieving that goal.

It is broadly accepted that the fundamental design and structure of California’s RPS legislation, as implemented by the Commission, is intended to stimulate the development of new renewable generation in California. It is also widely understood that new renewable generation is not likely to be developed or financed in California without the availability of long-term off-take contracts with substantial and creditworthy counterparties. In the current regime of “bundled” RECs, RPS-obligated LSEs purchase power and the associated RECs from renewable generators because it is the only means by which they can demonstrate compliance with the State’s RPS goals.

In authorizing the use of unbundled, tradable RECs for RPS compliance, the Commission must ensure that the statutory requirements noted above are met by adopting rules which apply equally to all RPS-obligated LSEs in a non-discriminatory fashion. The Commission should also ensure, however, that these rules do not result, *de facto*, in different requirements with respect to the long-term contracting function that is central to California’s development of new renewable resources. ESPs and CCAs are likely to have significantly lower (in absolute terms) annual procurement targets and overall RPS procurement targets than the State’s major IOUs. This fact raises the real possibility that, unless the Commission imposes limits on the percentage of RECs that can be counted towards RPS compliance, some RPS-obligated entities may succeed in meeting their annual and overall obligations through the purchase of paper rather than through the purchase of actual renewable electricity.

Recognizing this issue, the legislature included provisions in statute that require the Commission to establish a minimum level of long-term contractual commitments prior to authorizing the use of short-term contracts to satisfy RPS obligations.¹² The Commission set this minimum level in D.07-05-028. The RPS legislation gives the Commission similar authority to

¹² Cal. Pub. Util. Code § 399.14(b)(2).

limit the quantity of unbundled RECs that LSEs may use for RPS compliance.¹³ The Commission should exercise this authority. Setting limits on the use of unbundled RECs for RPS compliance will complement the Commission’s policies regarding short-term contracting. Further, setting such limits on the use of RECs for RPS compliance is unlikely to have any adverse or chilling effect on the development of a market for RECs because of the substantial demand for RECs statewide and the relatively limited supply described above. The Commission clearly has the discretion under existing law to impose conditions on the use of RECs for RPS compliance, and to the extent that the Commission concluded later that its rules are overly restrictive, it could certainly revisit them.

VI.

THE COMMISSION’S PRINCIPAL EFFORT AT THIS JUNCTURE SHOULD BE TO DEFINE ELIGIBILITY AND ACCOUNTING RULES FOR RECS WITH SPECIFICITY AND NOT TO DESIGN A MARKET OR TRADING RULES FOR RECS

Before RPS-obligated entities and other market participants will enter into transactions for the purchase and sale of unbundled, tradable RECs, they will need to be certain that RECs will be honored by the State for purposes of RPS compliance in the same manner that the purchase of physical renewable energy is honored. In the current system, RPS-obligated entities acquire energy having certain attributes clearly defined in statute. For RECs to become a currency of RPS compliance, they will have to have the same compliance characteristics as the associated renewable energy. Any other approach to the use of RECs for RPS compliance in California is likely to produce confusion and controversy. Moreover, this approach is consistent with the RPS legislation, which provides that a REC includes “all renewable and environmental attributes associated with the production of electricity from the eligible renewable energy resource.”¹⁴

¹³ Cal. Pub. Util. Code § 399.16(a)(7).

¹⁴ Cal. Pub. Util. Code § 399.12(g)(2).

To a great extent, this makes the Commission’s task relatively simple. If the Commission accepts the principle that a REC is treated as a proxy for the unit of renewable energy with which it was originally associated, and further ensures that once the energy is unbundled from the REC the energy cannot be counted again for RPS compliance purposes (something that WREGIS is capable of ensuring when it becomes fully functional), then both the same eligibility requirements that apply to energy and the same accounting rules that apply to energy can also be applied with relative ease to the eligibility of RECs for RPS compliance. Simply stated, if energy deliveries from a particular generating facility are eligible for RPS compliance, then unbundled, tradable RECs associated with energy deliveries from the facility should also be eligible.

Similarly, there is no need to “reinvent the wheel” with respect to the accounting mechanisms already adopted for tracking and reporting RPS compliance. A REC should be treated the same as the corresponding unit of renewable energy. This would mean that all of the banking and earmarking rules should apply to RECs just as they would be applied to units of energy. In the RPS accounting methodology, RECs should be viewed as interchangeable with energy because they ultimately represent the same thing in the context of RPS compliance – the delivery of a unit of RPS-compliant energy. Creating different accounting mechanisms for RECs than renewable energy would unnecessarily complicate the RPS accounting rules. Moreover, a REC represents a unit of generated renewable energy. Fairness dictates that the REC be treated the same as the unit of generated renewable energy for RPS accounting purposes.

As discussed above, SCE strongly recommends that the Commission focus on creating eligibility and accounting rules for RECs and not on designing a REC market or trading rules for RECs. If, as recommended by SCE above, the Commission finds that RECs should be treated in the same manner as renewable energy for RPS compliance, a REC market will emerge. Parties will make their own decisions to assign value to RECs and begin to transact in RECs. These transactions will likely be made through bilateral contracting in the near term. However, as confidence in the use of RECs increases and as additional sources of RECs are developed, SCE

expects that more sophisticated transactions and markets may emerge. A market created and designed through the experience of parties actually transacting in RECs will be more efficient and more effective than a market designed by the Commission without any experience in how RECs will actually be transacted. The Commission should focus on the eligibility and accounting rules for RECs and leave markets and trading rules to be developed organically.

VII.

RECS SHOULD BE AUTHORIZED FOR RPS COMPLIANCE ON A PROSPECTIVE BASIS ONLY

Prior to the passage of SB 107, no statutory authority existed for the use of unbundled RECs for RPS compliance in California. Furthermore, the authority for the use of the RECs for RPS compliance in SB 107 requires findings by the Commission and the CEC that WREGIS is capable of performing various functions, a condition which has yet to be satisfied. Thus, even at this time, no authority exists to use unbundled RECs for RPS compliance in California. The Commission should authorize the use of unbundled, tradable RECs for RPS compliance on a prospective basis only, and then only once WREGIS has become fully operational and capable of meeting the statutory conditions discussed above.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that, pursuant to the Commission's Rules of Practice and Procedure, I have this day served a true copy of PRE-WORKSHOP COMMENTS OF SOUTHERN CALIFORNIA EDISON COMPANY (U 338-E) REGARDING TRADEABLE RENEWABLE ENERGY CREDITS on all parties identified on the attached service list(s). Service was effected by one or more means indicated below:

Transmitting the copies via e-mail to all parties who have provided an e-mail address. First class mail will be used if electronic service cannot be effectuated.

Executed this 17th day of August, 2007, at Rosemead, California.

/s/ Sara Carrillo

By: [Sara Carrillo](#)

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R.06-02-012
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